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THE CENTER FOR SOCIAL DEVELOPMENT

THE COURT WATCH PROJECT

Annual Report, May-December 2009
to
Foundation Open Society Institute

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Narrative Annual Report

I. INTRODUCTION:

In order to ensure that crimes do not go unpunished, the State is obliged to prosecute those who commit them. Yet this is not necessarily a green light for State agents to do as they please; the State's interest in security must be balanced against individual human rights and freedoms. Thus, the right to a fair trial is essential in the criminal justice system. It ensures that any individual accused of breaching the law is nevertheless tried in accordance with the law, in a way that is fair, ensures due process, and does not jeopardize individual human rights and freedoms.

1. Goal: The Project aims to contribute to better functioning court system by monitoring the court performance, recording and reporting the situations, and suggesting recommendations for changes.

2. Justification

Need of the Access to Justice: Court Watch Project: The uniqueness of the Project provides an indispensable contribution to the Royal Government of Cambodia (RGC)'s stated objective of legal/judicial reform. An independent public scrutiny of criminal trial proceedings helps to ensure that basic fair trial rights are implemented in light of legal provisions as enshrined in the Constitution and the International Covenant on Civil and Political Rights. More specifically, the Project highlights the need for greater access to justice for the majority of Cambodians.

Issues to be addressed by the Project: The Project specifically addresses the access to justice issues by focusing on fair trial rights and the broad dissemination of information on these issues. It notes the obstacles to providing greater access to justice by observing/documenting trial hearings of Cambodian courts: what are the barriers confronting a Cambodian in the legal and judicial process?

Significance to Cambodia Legal and Judicial Reform: The Project is unique in Cambodia and feeds into the RGC's on-going legal and judicial reform efforts.

The Project acts an impartial observer of the court system by collecting, analyzing and disseminating data from public trials of 9 Cambodian courts. The Project offers recommendations which may include (i) a change of practice by judges, court officials, lawyers and police, (ii) an amendment to the law, (iii) additional training in specific areas.

The CWP reports and findings help to identify those areas of access to justice that require greater attention and resources. Moreover, these CWP reports and data are beneficial to different donor institutions, embassies in helping them to strategize and coordinate their action plan within the framework of legal and judicial reform.

3. Objectives: We believe that by acting as an independent watchdog the Court Watch Project (“CWP”) can help to ensure the better protection of human rights and the rule of law in Cambodia. The Court Watch Project was created in 2003 by the Center for Social Development (“CSD”) with three specific objectives:

To help ensure fair trials by acting as an independent watchdog;

To help build capacity within the legal system by feeding useful information into the judicial reform process; and

To disseminate information to relevant stakeholders, civil society, and the general public.

4. Beneficiaries:

(i) Parties to the criminal case such as defendants and victims; (ii) Legal and judicial officers: judges, prosecutors, lawyers, court clerks and judicial police officers. Although the Project monitors a number of selected courts, it intends to broaden the scope to all courts in Cambodia, thus involving all judicial and court officers in the country; (iii) Interested national and international institutions working on legal and judicial reform in Cambodia; (iv) The general Cambodian public.

Needs of the beneficiaries:

Parties to the case: a trial must be fair for all, not only for the defendants. A defendant is presumed innocent until the court finally finds him/her guilty through a process that is fair in accordance to the law and procedures that respect human rights. Victims of a crime also need the court to punish a real wrongdoer in accordance to these processes. Moreover, they need to be protected and supported before, during and after the trial if they so require.

Legal and judicial officers: the Court Watch Project acts as a mirror when providing feedback in identify flaws in the system or the violation of a particular right to these legal and judicial officers. It helps them who are also in the process of building their capacity to improve their performance.

Institutions working on legal and judicial reform cannot effectively design their action plan without independent information from the Court Watch Project. As one beneficiary noted: *it is difficult to challenge the data which has been independently collected for more than 5 years by professionals with law background and intensive training on criminal procedures and fair trial rights.*

Cambodian public: the reports and handbooks of the Court Watch Project are widely disseminated and trained to larger Cambodian public (e.g. to villagers at CSD public forums on “Justice & Reconciliation”, to university students, etc.) who find the information engaging and educational. Cambodians find the legal and judicial system complicated and beyond their means and comprehension. The Project helps to de-mystify the court system to average Cambodians.

Criteria of selection of the beneficiaries and identification of their needs:

The Court Watch Project observes public criminal trials and collect, analyze and disseminate data based on these observations. Hence, the criteria of beneficiaries are individuals/actors who are connected and involved

in these criminal trial proceedings, as well as those institutions and organizations whose work relate to legal and judicial reform.

Currently, the Project monitors and proposes to continue monitoring the Supreme Court, the Appeals Court and 7 municipal and provincial courts in Phnom Penh, Kandal, Kampong Cham, Battambang, Kampot, Siem Reap and Sihanoukville. These are the busiest courts which have jurisdiction over municipalities or provinces where the population density is high and the economic activity is important, and consequently, the possible irregularities to be addressed, e.g. access to justice, is high.

Involvement of the beneficiaries in the Project: CSD initially designed this Project in collaboration with The Asia Foundation. During the 4th quarter of 2005, the Project was strengthened and improved in collaboration with the East West Management Institute, another partner in the legal and judicial reform process.

CSD has been conducting internal evaluation of the Court Watch Project through different forms. In 3rd quarter of 2008, the Project conducted a survey to seek feedbacks from the readers of its reports and handbooks in order to improve the quality of these publications and understand the degree of their usefulness, as well as to explore areas for further work/analysis. About 200 people were interviewed including judicial officers, lawyers and NGO workers.

Monitoring the courts involves fact finding and the collection of data. It requires the cooperation from the courts it monitors. Although these courts have not directly been involved in the design of the Project, however, without their cooperation the monitoring would be extremely difficult if not next to impossible.

II. MANDATES AND ACTIVITIES:

The CWP is mandated to monitor the courts of law in Cambodia, focusing attention on human rights and access to justice. Since December 2007, nine courts of law have been monitored, including two higher courts which are located in Phnom Penh (namely the Supreme Court, the Appeals Court), the Provincial Courts of Battambang, Kampong Cham, Kampot, Kandal, Siem Reap, and the Municipal Courts of Phnom Penh and Sihanoukville.

To effectively implement these activities, CSD established new branch offices in the provinces of Battambang, Kampong Cham, Siem Reap, Kampot and Sihanoukville. These provincial offices allow us to better monitor cases, especially those relating to human trafficking (funded by The Asia Foundation), as well as to better conduct seminars with local citizens on how to monitor court proceedings on their own (a project funded by AusAID). These branches also reflect CSD's desire to be closer to the people at the grassroots level across all of Cambodia, building deeper, more trusting, and more lasting relationships.

The CWP mandate is limited to that of *public hearings* of criminal cases.

The Court Watch Project, in addition to court monitoring, publishes quarterly *Court Watch Bulletins*, an *Annual Report*, and thematic reports to meet its other two principle objectives: (1) building capacity by providing feedback to the judicial system and (2) making the process more accessible to the public by disseminating CSD's findings.

These reports and *Bulletins* highlight findings, outline applicable fair trial rights within the Cambodian criminal justice system, and provide recommendations for judicial reform. These publications are distributed to the relevant stakeholders, such as judges, prosecutors, lawyers, court clerks, judicial police officers, and governmental agencies, civil society organizations working on legal and judicial reform, academia, different donor institutions, and embassies in helping them to strategy and coordinate their action plan within the

framework of legal and judicial reform, and the public at large. Also, the CWP disseminates its findings through CSD's *Voice of Justice* Program (mainly radio, columns), website www.csdcambodia.org, and seminars.

III. MAJOR ARCHIEVEMENTS:

A. MONITORING AT NATIONAL COURTS

During the Reporting Period, the Project staff engaged in many activities and events. Eleven court monitors (including two data entry officers) daily observed the nine abovementioned courts. They rotated among themselves to observe the courts in the morning session, record the information into the database, and then write detailed reports in the afternoon. In general, the courts conduct hearings in the morning, except the Municipal Court of Phnom Penh, which usually also hears cases in the afternoon.

The below schedule is an example of the court monitoring activities during a fourth week in July 2009.

During the Reporting Period (May–December 09), CSD's Court Watch Project monitored nine courts of law. The Project monitored and recorded **556 full criminal trials**, in which **410** were observed at the courts of first instance, (**273** at the Municipal Court of Phnom Penh, **15** at the Provincial Court of Kandal, **25** at Kampong Cham, **11** at Battambang, **113** at Siem Reap, **32** at Sihanoukville, and **15** at Kampot), **4** at the Supreme Court. At the Appeals Court, which is mandated to re-hear the cases, CWP observed **68** trials on criminal cases. Of the **556** trials involving **893 defendants**, **309 (56%)** were felonies cases and **247 (44%)** were misdemeanor cases.

Of these **893** defendants, **778** were adult defendants and **115** were juvenile defendants.

	Supreme Court	Appeals Court	Phnom Penh Municipal Court	Battambang Court	Kampong Cham Court	Kandal Court	Siem Reap Court	Kampot Court	Sihanoukville Court	Total
Cases	4	68	273	11	25	15	113	15	32	556
Defendants	6	94	463	26	37	26	164	24	53	893

4 th week		Morning	Afternoon	Morning	Afternoon	Morning	Afternoon	Data Entry			
July	Supreme court	Appeals Court			P. Penh Court			Kandal Court			Data Entry
Day	Room	Room	Room	Room 1	Room 2	Room	Room 1	Room 2	Room 1		
	Monitor1	Monitor2	Monitor	Monitor3	Monitor4	Monitor5	Monitor6	Monitor7	Monitor8		
27-July-2009 - 31-July-2009	Monday 27-Jul	N/A	Vong		Kimmao	Sivlong	Thouen	Phalin		Sophal	
	Tuesday 28-Jul	N/A	Kimmao		Phalin	Sivlong	Thouen	Vong		Charya	
	Wednesday 29-Jul	Charya	Phalin		Vong	Sivlong		Kimmao		Sophal	
	Thursday 30-Jul	N/A	Vong		Kimmao	Sivlong		Phalin		Charya	
	Friday 31-Jul	N/A	Kimmao		Phalin	Sivlong		Vong		Sophal	
											Charya

Out of these **893** defendants, CSD monitored that **495** defendants were in pre-trial detention awaiting trials, in which **408** were adults, and **80** were juveniles. CSD court monitors could not identify the age of **7** accused person because they were absent at trials.

In addition during the Reporting Period, out of these **893** defendants, CWP observed that only **585 (66%)** accused persons were represented by the lawyer, while other **308 (34%)** were not represented by the lawyer. Out of the **893** defendants who had legal representative, **481** were charged with felony in which **392** were adults and **89** were juveniles, and court monitors could not identify the age of other **6** accused persons as they were not present in the trials. Only **104** defendants were charged with misdemeanor offenses, including **87** adults and **16** juveniles, and others **1** person could not be known as s/he was absent in the trial.

At all nine courts of law monitored, CWP identified that out of **893** defendants, only **455 (58%)** were present in the trials, while other **331 (42%)** were tried in absentia. CSD also noted that this is a great concern regarding to the right to be present at trial of the defendants, which is fundamental element of the principle of “equality of arms”.

B. MONITORING AT EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA (ECCC)

KRT Trial Monitor is a program of the Asian International Justice Initiative (AIJI), collaboration between the U.C. Berkeley War Crimes Studies Center and the East-West Center. The Initiative aims to create networks and foster dialogue between human rights professionals focused on key human rights and international criminal justice issues facing the Asia-Pacific region today.

KRT Trial Monitor is a weekly reporting service covering trial proceedings at the Extraordinary Chambers in the Courts of Cambodia (or Khmer Rouge Tribunal). At present, KRT Trial Monitor is monitoring the case of Kaing Guek Eav alias "Duch" - the first (and so far the only) case that has proceeded to the trial stage.

CSD has joined AIJI's Program to endeavor to use this opportunity to its greatest advantage and is cooperating to draft and comment all the reports (written reports and film reports), as well as to disseminate the reports through CSD's wide network (email, website, public forums and Voice of justice radio program) of over 500 institutions in Cambodia. AIJI has assembled a trial monitoring team, comprising ten lawyers – four of whom are Cambodian nationals (including the Head of CSD's domestic court monitoring program, Ms CHOU Vineath) and six of whom are from the region (Singapore, Indonesia and China) as well as internationals (Germany, Switzerland, and shortly, the United States).

During the Reporting Period, 15 written reports (from report No. 5 to 19) and 15 program of films reports in Khmer and English were published, distributed and broadcasted through CSD's email, website, public forums, and the Cambodia Television Network (CTN), which broadcasts every Monday at 1h30 pm and Tuesday, at 4h30 pm.

In addition, the CWP also collaborated with the Voice of Justice Program (VOJ) radio of CSD also produces **11** programs on KRT topics in form of Live Show and Pre-record Show which broadcasted during weekdays and weekends on FM 104, FM 105, FM 102, FM 93.5 in Phnom Penh and FW 90.25 at Battambang province regarding following topics:

Live Show:

1. Criminals of Duch Case
2. Initial hearing of Duch Case
3. Public hearing on Duch Case 1st Day
4. Public hearing on Duch Case 2nd Day
5. Public hearing on Duch Case 3rd Day

Pre-record shows:

1. Reading on “KRT monitoring report” part 1
2. Reading on “KRT monitoring report” part 2
3. Reading on “KRT monitoring report” part 3
4. Reading on “KRT monitoring report” part 4
5. Reading on “KRT monitoring report” part 5
6. Reading on “KRT monitoring report” part 6

All interested readers could find all these report in Khmer and English via www.csdcambodia.org, www.kidcambodia.org, <http://Socrate.berkeley.edu/-warcrime/>, and www.eastwestcenter.org/aiji.

C. REPORTS AND PUBLICATIONS

1. Court Watch Bulletins

The court watch Bulletin No 24 was already drafted and finalized during the Reporting Period, in which some high profile cases were monitored and reported, with the recommendations for justice reform. This Bulletin was waiting for printing with the support of the UNOHCHR office. Unfortunately, it was not be printed due to the internal issue happened at CSD in July. However, the previous numbers of the Court Watch Bulletin were distributed in place to the needed persons, especially the students at university.

2. Annual Report

Each year, the Court Watch Project publishes an Annual Report covering the monitoring activities and issues identified during the year. The *2008 CWP's Annual Report* covering the period from Oct. 2007 to Sept. 2008 was finalized, but was not being printed due to the non-funding support. However, the soft copy of this Annual Report was posted in the CSD's website in June 2009. Therefore the stakeholders and interested persons and institution and beneficiaries could access it through www.csdcambodia.org.

3. Handbook on Fair Trial Rights

In 2007, the Court Watch Project published and distributed 7,500 copies of the *Fair Trial Handbook (FTH)*, which is written in both Khmer and English. This Handbook is easy to read and understand because of the simple layout, design, and the colorful illustrations—so it is accessible to ordinary Cambodians. The Handbook explains in layman’s terms the Cambodian judicial system, the basic concepts relating to the rule of law and fair trial rights, and highlights the legal documents recognized by Cambodia documenting these rights as well as the benefits of court monitoring towards the legal and judicial reform process. In 2008, the Project developed and revised the Handbook to make it consistent with the new Code of Criminal Procedure, which was adopted in August 2007, therefore 170,000 copies of these Handbooks were published and distributed with free of charge.

During the Reporting Period, this Handbook was also being distributed to target readers, particularly individuals and institutions working on legal and judicial issues, as well as the students.

In addition, in June 2009 the 5th edition of the FTH was already updated and sent to the UNOHCHR office which agreed to support for printing.



D. COOPERATION AND ADVOCACY:

Monitoring the courts involves fact-finding and the collection of data, and requires cooperation from the courts; without their cooperation the monitoring would be extremely difficult. So the CWP directly met and discussed the project with judicial officers and other actors involved in criminal proceedings and judicial reform as a whole. The CWP also set up meetings with the court president, judges, prosecutors, and the relevant actors and stakeholders with the express purpose of strengthening cooperation. At these meetings, we discussed the issues and findings identified by the Project, suggested recommendations, distributed CSD publications (Court Watch Bulletins, Fair Trial Handbook, Annual Report, etc).

- On 22nd May 2009, the Project Manager, in the name of CSD, was invited by the donor Foundation Open Society Institute to attend the boat trip's dinner with other grantees to strengthening the cooperation.
- On June 12, 2009, Deputy Executive Director and the CWP Manager conducted a meeting with Mr. Nick Rine, Legal professor of Michigan Law School, to discuss about Juvenile and women issues in Cambodia.
- On June 15, 2009 Executive Director and senior monitor, Mr. Sen Sophal, had a meeting with Mr. Katrina Natale, researcher from the Human Rights Center at the University of California, Berkeley to discuss about Cambodian Legal system. In addition, the CWP manager also had a meeting with her on 18 July to discuss on the same topic and share experiences.
- On June 17, 2009 the court monitor in Sihanoukville province was invited to attend the meeting of the Second Commission of Senate conducted at the Provincial governor's office.
- On 6-7 August 2009, the court monitor in Battambang province was invited to attend the workshop, organized by Banteay Srey Organization.
- Sept-Nov 2009, Head of Legal Unit and court monitors was invited to attended as speaker, attendee the workshop, seminars and round table discussion (i.e comfrel, Chrac, ...)

IV. LESSONS LEARNED FROM THE PROJECT

Related to activities:

Observing the court proceedings on a regular basic is deepening our understanding and knowledge of fair trial rights, the court system in Cambodia, its processes, and the flaws in light of international legal principles. The team of the Legal Unit frequently and regularly meets to discuss and share observations of what we have witnessed, learned in trainings and would like to see reform.

During the Reporting Period, the Project faced some difficulties regarding to end of funding, resignation of staffs, absence of data analysis, and especially the internal issue happened at CSD. However, all court monitors kept going to the courts for trial monitoring and committed for working. Passing these difficulties, especially funding issue, make CSD team are more solidarity, struggle, and strength in order to see the bright future.

Related to staff capacity building:

CWP has continuous in house training with its members to discuss and share experiences on faced issues, as well as on fair trial rights, new legislations and database management.

In addition, during this Reporting Period, in late of June, the CWP Manager was invited by the European Visitor Program to visit the EU institution at Belgium and the European court of Human Rights in Strasbourg, France for 1 week.

Related to materials produced:

During this reporting period, CWP team spent a lot of time drafting, finalizing of CWB.24. In addition, CWP continued to distribute the remaining copies of its publications such as Annual Report, Fair Trial Handbook, and some of CWB, all free of charge. Readers found the importance of these publications to be valuable in deepening their knowledge of fair trial rights.

ANNEX

Map of CWP's Activities from 2003-2009



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